

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0247

Sales Tax

For Tax Years 2003-05

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ISSUE

I. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer operates a business in Indiana. As the result of an audit, the Indiana Department of Revenue issued proposed liabilities for the years in question for unpaid retail sales tax along with a ten percent negligence penalty and interest. Taxpayer protests the imposition of penalty and interest. Further facts will be supplied as required.

I. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. First, taxpayer protests imposition of interest. The Department refers to IC 6-8.1-10-1(e), which states:

Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section.

Therefore, the Department may not waive interest under IC 6-8.1-10-1(e).

Next, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer has established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c). Under IC 6-8.1-10-1(e), the interest may not be waived.

FINDING

Taxpayer's protest is denied regarding imposition of interest and sustained regarding imposition of penalty.